Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems	)	ET Docket No. 00-258
	)	
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service	)	ET Docket No. 95-18
	)	
The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band	)	IB Docket No. 99-81
	)	
Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band	)	IB Docket No. 01-185
	)	
To: The Commission	)	

JOINT COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND
THE NATIONAL ASSOCIATION OF BROADCASTERS

October 22, 2001

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SUMMARY

Broadcast Auxiliary Services ("BAS") are essential to an effective, free broadcast television service. Broadcasters intensively use the full seven 2 GHz BAS channels covering 120 megahertz of spectrum within local markets and across market boundaries to transmit live, "at the scene" news reports, to provide special events coverage (*e.g.*, "helmet-cam" shots, political convention roving reporters), and to relay programming to remote communities in rural markets. In recognition of the critical public services that BAS operators provide, the Commission sought to design the relocation of BAS services from spectrum reallocated to Mobile Satellite Service ("MSS") in such a way as to minimize the disruption of BAS and to ensure that operators are made whole for their relocation costs. The Commission now proposes to change the MSS allocation to allow new wireless entrants to use that spectrum. Any reallocation of MSS spectrum that changes the MSS channel plan and the probable date at which new services will commence will necessitate a change to BAS relocation plans.

The current BAS relocation plan consists of a complex, two-phase, market-staggered approach that was premised on a slow MSS roll-out and consideration for the large up-front costs and lack of current revenues of MSS entrants. Reallocation of MSS spectrum to wireless services will change both of those factual assumptions. New wireless entrants will want and be prepared to use the BAS spectrum much earlier. New wireless entrants will probably not have the same build-out costs and delayed revenue stream that MSS operators do. Moreover, the uncertainty resulting from the reallocation proposals in the instant proceeding already has affected negotiations. The Commission needs to adjust the BAS relocation plan to accommodate these new facts if it reallocates MSS spectrum. Specifically, the Commission should (1) immediately stay all relocation negotiations pending a decision regarding reallocation, and if the Commission reallocates spectrum, to continue the stay through the licensing of new entrants, (2) relocate all BAS incumbents in all markets together, (3) eliminate or extend the sunset for compensation of displaced BAS incumbents, and (4) ensure prompt and full compensation of BAS incumbents prior to relocation.

In a related proceeding, the Commission has asked if it should provide MSS licensees with the flexibility to use their assigned satellite spectrum for terrestrial purposes. If it does so, the Commission should ensure that the terrestrial use is truly "ancillary" – that is, used for augmenting otherwise full coverage satellite signals in areas where transmission is poor. It would be unfair to allow MSS operators, which have not paid for their spectrum as have other providers of terrestrial mobile services, to use the spectrum for terrestrial services that are not entirely related to their primary satellite service.

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The Association for Maximum Service Television, Inc. ("MSTV") and the National Association of Broadcasters ("NAB")[1] (collectively, "Joint Broadcasters") join together to submit these comments in the above-referenced proceedings. Because at least three – if not a majority – of the Mobile-Satellite Service ("MSS") licensees are in severe financial distress and it is unclear whether MSS operators will ever fully occupy their 2 GHz allocation or use it for

[1] MSTV is a non-profit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system. NAB is a non-profit, incorporated association of radio and television stations and networks that serves and represents the American broadcast industry.

satellite service,[2] CTIA sought and the Commission is now considering reallocation of some 2 GHz MSS spectrum (including a portion of the 1990-2025 MHz band) for advanced wireless services, including third generation ("3G") wireless services.[3] Joint Broadcasters urge the Commission (1) to support the reallocation of 2 GHz spectrum for advanced wireless services, (2) to reconsider, in light of the proposed reallocation, the phased relocation plan for Broadcast Auxiliary Services ("BAS") recently established in ET Docket No. 95-18[4] and adopt a revised relocation plan that will allow all incumbent BAS licensees to vacate the spectrum at 1990-2025 MHz in one step while continuing to provide the invaluable news and special events coverage the public requires, (3) to immediately stay all relocation negotiations pending a decision regarding reallocation, and if the Commission reallocates spectrum, to continue the stay through the licensing of new entrants, and (4) to ensure that BAS incumbents are paid in full prior to relocating their services, consistent with the Commission's prior determination that BAS incumbents are to be compensated for the costs of relocating to make spectrum available for new services.[5]

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[2] *See Ex Parte* Letter to Ms. Magalie Roman Salas, Secretary, FCC, from NAB and MSTV, ET Docket No. 95-18 (Jan. 25, 2001) (describing bankruptcies and financial distress among 2 GHz MSS applicants); Letter to FCC Chairman Michael Powell from Lawrence H. Williams, New ICO Global Communications (Holdings) Ltd. (Mar. 8, 2001) (requesting that MSS providers be allowed to provide terrestrial wireless service because MSS alone is not viable).

[3] Petition for Rulemaking of the Cellular Telecommunications & Internet Association (filed May 18, 2001) ("*CTIA Petition*").

[4] NAB and MSTV have pending a petition for partial reconsideration of that relocation plan. *See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, Petition for Partial Reconsideration of the National Association of Broadcasters and the Association for Maximum Service Television, Inc., ET Docket No. 95-18 (Sept. 6, 2000) ("*NAB/MSTV 2 GHz Relocation Petition for Reconsideration*").

[5] *See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 95-18, 12 FCC Rcd 7388, 7402 (1997) ("*2 GHz MSS Allocation Order*"), *aff'd on recon.*,

(continued...)

INTRODUCTION

As the Joint Broadcasters and others have previously explained in this and other proceedings, the Broadcast Auxiliary Services at stake in this proceeding are essential to an effective, free broadcast television service.[6] Broadcasters intensively use the seven 2 GHz BAS channels all over the country and at all hours for services including:

- Electronic News Gathering (ENG): Broadcasters use 2 GHz BAS spectrum on a shared, coordinated basis primarily to transmit live, "at the scene" news reports to local studios during and in preparation for local newscasts.

- Special Events Coverage: Broadcasters use 2 GHz BAS spectrum to transmit point-of-view (POV) camera transmissions to enhance special events coverage. Examples include blimp shots and "helmet-cam" views during sporting events, live remote coverage of news events, and shots from roving reporters on the floor of political conventions or along parade routes.

- Studio-to-transmitter links (STLs) and Inter-City Relays (ICRs): In more rural markets, local stations use 2 GHz spectrum to relay programming to remote communities.

While some of these uses take place within local markets, others require mobility outside the local market.[7] For example, a local station might send an ENG truck to cover out-of-market

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(continued...)
Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order, 13 FCC Rcd 23949, 23957 (1998) ("*2 GHz MO&O/3d NPRM /Order*").

[6] *See, e.g.*, Joint Comments of the Association for Maximum Service Television, Inc. and Other Major Television Broadcasting Entities, ET Docket No. 95-18, at 4-6 (May 5, 1995) ("*2 GHz Relocation Joint Broadcast Comments I*"); Joint Comments of the Association for Maximum Service Television, Inc. and Other Major Television Broadcasting Entities, ET Docket No. 95-18, at 7-8 (May 17, 1996) ("*2 GHz Relocation Joint Broadcast Comments II*"); *see also* Joint Comments of the Association for Maximum Service Television, Inc. and Other Major Television Broadcasting Entities, IC Docket No. 94-31, at 6-9 (March 6, 1995); Joint Comments of the Association for Maximum Service Television, Inc. and Other Major Television Broadcasting Entities, ET Docket No. 94-31, at 5 (July 15, 1994).

[7] *See, e.g., Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, ET Docket No. 95-18, 15 FCC Rcd. 12315, 12323 (2000) ("The BAS system is highly integrated, and ENG applications often operate both within markets and across market boundaries.") ("*2 GHz Relocation 2d R&O/2d MO&O*").

breaking news of national importance (such as the recent terrorist attacks in New York City and Washington, D.C.) or an out-of-market event of local significance (such as a local sports team's away game). Consumers expect and depend on ENG and other BAS-supported services from their local broadcasters and national networks. During the September 11 terrorist attacks, for example, viewers across the country flocked to the nearest television for non-stop coverage of emerging developments. That comprehensive coverage was made possible largely by broadcasters' effective sharing on a nationwide basis of 2 GHz BAS spectrum.

As growing numbers of local broadcasters provide local news in their markets, the 2 GHz spectrum has become increasingly crowded. Broadcasters have developed sophisticated mechanisms for flexibly allocating and sharing BAS spectrum among the licensees seeking access (who, as noted above, may come from within the local market or include out-of-market licensees). Nonetheless, the ever-increasing demands on the spectrum make it essential that the Commission preserve seven channels of BAS spectrum (either 15 megahertz for analog service or 12 megahertz for digital service) for broadcasters to continue to provide the services viewers expect.[8]

Despite the already heavy demands on the 2 GHz BAS spectrum, broadcasters in the *2 GHz Relocation Proceeding* expressed a willingness to be relocated to a narrower spectrum band to make way for new services, provided that the costs of relocation are borne by the new entrants and the relocation process itself does not disrupt the essential services broadcasters use the spectrum to provide.[9] These considerations remain paramount as the Commission considers

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[8] *See id.* at 12319, 12323; Joint Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, ET Docket No. 95-18, at 8 (Feb. 3, 1999) ("*2 GHz Relocation Joint Broadcast Comments III*")

[9] *See, e.g., 2 GHz Relocation Joint Broadcast Comments III* at 3.

further reallocation of the 2 GHz band currently occupied by BAS incumbents. For the past ten years, broadcasters have sought to accommodate Congress's and the Commission's decisions concerning allocation of the spectrum, but prolonged uncertainty has made it difficult for broadcasters to plan and for suppliers to develop new, affordable equipment to operate in the revised band plan. Even though the World Administrative Radio Conference allocated the 1980-2010 band to MSS in 1992, the Commission did not make its MSS allocation until early 1997, and then Congress directed a reallocation that required BAS relocation plans to change again. Only last year did the Commission identify the final spectrum band for BAS and adopt a relocation plan. This uncertainty comes at a particularly difficult time in the broadcast industry when stations are – amidst an unprecedented downturn in advertising revenues – investing $2-$10 million each to meet aggressive deadlines to operate digital facilities alongside of their existing analog stations.

It is against this backdrop that the Commission once again proposes to change the allocation of the 1990-2025 MHz band and, as a result, change the way in which BAS incumbents are relocated from the band. The Joint Broadcasters support the Commission's efforts to make the most efficient and productive use of 2 GHz spectrum, but are concerned about the introduction of yet more complexity into a BAS relocation that already involves three different band plans for a service that depends on close cooperation among its operators nationwide. The Commission should take advantage of the opportunity this proposed reallocation presents to rationalize and simplify the relocation of BAS incumbents.

DISCUSSION

I. THE COMMISSION SHOULD ENSURE THAT SPECTRUM BEING VACATED BY BAS INCUMBENTS IS UTILIZED FULLY AND EFFICIENTLY.

The 1990-2025 MHz band currently is allocated to MSS uplinks in the United States.[10] Eight entities hold authorizations to operate throughout that spectrum (on a primary basis in 3.5 megahertz blocks of their choosing, spaced at 3.88 megahertz intervals, and on a secondary basis with respect to other 2 GHz MSS operators, subject to certain conditions).[11] An additional 3.88 megahertz of spectrum is available for expansion by MSS operators serving rural areas.[12] This licensing scheme was premised on the expectation that each MSS system would select a 3.5 megahertz block as its "primary" assignment once it launched its first satellite, but that such system might operate in another block of the allocated spectrum until such block was claimed by another MSS entrant for exclusive use. The Commission anticipated that because some MSS licensees might take a decade or so to become operational, while some might never begin service, the MSS spectrum would be used by a relatively small number of licensees.

The *Wireless Reallocation MO&O/FNPRM* now proposes a number of alternatives for making spectrum within the 1990-2025 MHz uplink (and the 2165-2200 MHz

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[10] *See 2 GHz MSS Allocation Order*, 12 FCC Rcd at 7394-95.

[11] *See Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Report and Order, IB Docket No. 99-81, 15 FCC Rcd 16127, 16138-40 (2000) ("*2 GHz MSS Service Rules R&O*"); *The Boeing Company*, Order and Authorization, DA 01-1631 (IB July 17, 2001); *Celsat America, Inc.*, Order and Authorization, DA 01-1632 (IB July 17,2001); *Constellation Communications Holdings, Inc.*, Order and Authorization, DA 01-1633 (IB/OET July 17, 2001); *Globalstar, L.P.*, Order and Authorization, DA 01-1634 (IB/OET July 17, 2001); *ICO Services Limited*, Order, DA 01-1635 (IB/OET July 17, 2001); *Iridium LLC*, Order and Authorization, DA 01-1636 (IB July 17, 2001); *Mobile Communications Holdings, Inc.*, Order and Authorization, DA 01-1637 (IB/OET July 17, 2001); *TMI Communications and Company*, Order, DA 01-1638 (IB July 17, 2001).

[12] *See 2 GHz MSS Service Rules R&O*, 15 FCC Rcd at 16146-47.

downlink) band available for advanced wireless services.[13] The Joint Broadcasters support the Commission's efforts to ensure that spectrum is used efficiently and productively, and they do not object to reallocation of spectrum in the 1990-2025 MHz band. The apparent failure of MSS as a viable service (at least as originally proposed) certainly justifies the reallocation of at least a part of that spectrum. However, a change in the allocations will, as described below, also require the FCC to reconsider the BAS relocation plan, since it rested on an assumption that there would be no use of the MSS spectrum above 2008 MHz until the second phase of the BAS relocation.

II. THE COMMISSION SHOULD RECONSIDER THE CURRENT BAS RELOCATION PLAN AND ADOPT A REVISED PLAN THAT MINIMIZES THE DISRUPTION OF INCUMBENT SERVICES.

A. Changed Circumstances Arising From The Proposed Reallocation Of MSS Spectrum Justify Revising The BAS Relocation Plan.

As the Commission has acknowledged, a decision to reallocate any portion of the MSS spectrum at 1990-2025 MHz to advanced wireless services necessitates reconsideration of the existing plan for relocating the BAS incumbents currently using the band.[14] The existing plan contemplates a phased relocation of BAS incumbents, first from BAS channel 1 (1990-2008 MHz) and then, as demand expands, from BAS channel 2 (2009-2025 MHz). To the extent that a reallocation would be designed to put all the spectrum in the 1990-2025 MHz to use as quickly as possible, the existing phased relocation plan will be unworkable. It will not work for new entrants that need clear spectrum right away (not in stages), and it will not work for incumbents that need access to seven channels and must operate on a consistent band plan nationwide.

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[13] *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New 3G Services, including Third Generation Wireless Systems*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, ET Docket No. 00-258, FCC 01-224, at ¶¶ 24-27 (rel. Aug. 20, 2001) ("*Wireless Reallocation MO&O/FNPRM*").

[14] *See id.* at ¶¶ 32-33.

Under the relocation plan the Commission adopted in the *2 GHz BAS Relocation 2d R&O/2d MO&O*, BAS incumbents are to be relocated out of the 1990-2025 MHz band in two phases and, within each phase, on a staggered basis by television market size. In Phase I, BAS incumbents must vacate existing BAS Channel 1 (1990-2008 MHz). Before the first MSS entrant launches service, it must relocate BAS incumbents in the Top 30 Nielsen Designated Market Areas ("DMAs") to an interim seven-channel band plan consisting of one 15 megahertz channel and six 14.5 megahertz channels. BAS incumbents in DMAs 31-100 must be relocated to the Phase I band plan within three years after the first MSS entrant launches service; in the meantime, they must operate on six 17 megahertz channels under the old band plan. BAS incumbents in DMAs 100+ must operate on six channels under the old band plan throughout Phase I. At Phase II (which is triggered when Phase I spectrum is no longer sufficient for MSS operators), BAS incumbents must clear the remaining 17 megahertz (2009-2025 MHz) of the MSS allocation. Again, BAS incumbents in the Top 30 DMAs must be relocated to the final band plan of seven 12 megahertz (digital) channels before the first MSS entrant begins operation in the Phase II spectrum. BAS incumbents in DMAs 31-100 must be relocated to the final band plan within three years after MSS begins using the Phase II spectrum; in the meantime, the BAS incumbents must operate on six Phase I channels (including Phase I BAS Channel 2 from 2023-2037.5 MHz). Incumbents in DMAs 101 and higher must be relocated to the final band plan within five years after MSS begins using Phase II spectrum; during the first five years of Phase II, they must operate in five 17 megahertz original BAS channels.[15]

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[15] *See 2 GHz Relocation 2d R&O/2d MO&O*, 15 FCC Rcd at 12326-27.

The factual predicate for the current BAS relocation plan would no longer exist if the upper end of the 2 GHz MSS band is reallocated for wireless use. In crafting its relocation plan, the Commission was concerned that a few early MSS entrants would not be able to bear the costs of a nationwide transition of all BAS incumbents while at the same time paying the substantial upfront capital costs to launch satellite systems.[16] A phased relocation was meant to allow MSS entrants to pay for much of the relocation out of operating revenue.[17] The Commission also feared that a one-step relocation of BAS incumbents could leave substantial amounts of spectrum unused pending widespread deployment of MSS.[18] These concerns simply do not apply if advanced wireless services are to use a portion of the MSS spectrum. The number of entities ready to initiate advanced wireless services promptly is significantly greater than the one MSS entrant (ICO) that was nearing launch of a 2 GHz MSS system when the current relocation plan was adopted.[19] Moreover, the wireless service providers interested in deploying 3G services have for the most part already deployed – and are realizing revenue from – first and/or second generation wireless systems.[20] Thus, many new wireless entrants will be in

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[16] *See id.* at 12325 ("Because of the need for nationwide relocation by relatively few licensees, we believe it is necessary to minimize costs to the extent possible for MSS licensees, and to defer costs where possible so that they can be paid on an ongoing basis, rather than in a lump sum.").

[17] *See id.* at 12327 ("This [two-phased, staggered] approach will allow new MSS licensees to spread out the costs of BAS relocation over several years, and pay much of the cost out of operating revenues, rather than start-up capital").

[18] *See id.* ("We also note that some MSS licensees will begin service later than others. This argues strongly against a national cut-over which could leave substantial amounts of valuable 2 GHz spectrum unused for a long period of time.").

[19] *See* CTIA Petition at 5 (stating that various entities desperately need new spectrum: "CMRS providers, for example, need new spectrum to meet the ever increasing demand for existing services and to roll out advanced mobile services.").

[20] The wireless providers most likely to seek to acquire more spectrum for 3G uses, based on participation in the latest PCS license auction, include the country's largest established providers – Verizon, Sprint, AT&T Wireless, Cingular, and VoiceStream.

a position to pay BAS relocation costs out of existing operating revenue rather than out of investment capital. The financial constraints and other unique factual circumstances influencing the Commission's decision in the *2 GHz Relocation 2d R&O/2d MO&O* are not present to the same degree for advanced wireless entrants and thus do not justify imposing the burden of phased relocation on BAS incumbents in order to minimize costs for the new entrants.

The new facts described above not only make the existing relocation plan unnecessary, but they also render it unworkable. The existing relocation plan is simply incompatible with rapid deployment of advanced wireless services in the upper portion of the 1990-2025 MHz band. Attempting to maintain a two-phased, market-staggered relocation to make spectrum available for two separate categories of entrants – one offering service on a national basis and the other on a regional or local basis – that seek access to opposite ends of the spectrum band would be entirely incompatible both with the goal of "ensur[ing] the continuity of BAS during the transition"[21] and with the goal of rapid deployment of 3G services. Moreover, allowing advanced wireless entrants to use the upper part of the 1990-2025 MHz band immediately, without restructuring the BAS relocation, would be inconsistent with the current plan in which no MSS licensee can begin operations in the 2023-2025 MHz portion until *all* BAS licensees have been relocated to the final BAS band.[22]

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[21] *2 GHz Relocation 2d R&O/2d MO&O*, 15 FCC Rcd at 12326. The Commission noted that "BAS is a critical part of the broadcasting system by which information and entertainment is [*sic*] provided to the American public. We must minimize the disruption and down time BAS licensees will undergo in the transition, in order to continue day-to-day high quality BAS service." *Id.*

[22] *See id.* at 12327 (concluding it would be "excessively onerous" to forbid the use of two Phase I channels during the Phase II transition).

B. BAS Relocation Should Be Accomplished In A Single Phase Once The New Entrants Are Identified.

If there is a reallocation of MSS spectrum, the Commission should relocate all BAS incumbents nationwide in a single transition to the new 12 megahertz channel plan. Specifically, the Joint Broadcasters propose the following modifications to the existing BAS relocation plan:

Stay Negotiations with MSS Entrants: Under the existing relocation plan, mandatory negotiations over compensation for the BAS relocation commenced September 6, 2000 and must conclude by September 6, 2002 to avoid involuntary relocation. Given the uncertainty the Commission's *Wireless Reallocation MO&O/FNPRM* has introduced into the relocation process, the Commission should immediately stay all relocation negotiations pending a decision regarding reallocation, and if the Commission reallocates spectrum, the stay should continue through the licensing of new entrants.

Relocate All BAS Incumbents In All Markets At One Time: Under the proposed spectrum reallocation, two categories of new entrants will seek prompt access to the full 1990-2025 MHz spectrum band. Collectively, those entrants have a need for – and should have adequate resources to pay for – the full relocation of all BAS incumbents to their final channel plan. Accordingly, the Commission should take advantage of this opportunity to "allow early entry for new technology providers"[23] while preserving both the high quality and "highly integrated" nature of the BAS service[24] by assuring that all BAS incumbents are relocated to their new channel plan together.

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[23] *Id.* at 12325.

[24] *Id.* at 12323. ("BAS licensees are typically licensed to use all seven BAS channels, and channel usage is coordinated on a dynamic basis by frequency coordinators in a TV market.").

Eliminate or Extend Sunset: Under the existing relocation plan, all responsibility to compensate BAS incumbents for relocating to the new spectrum band ends on September 6, 2010. As the Joint Broadcasters explained in their Petition for Partial Reconsideration of the *2 GHz Relocation 2dR&O/2dMO&O*, this arbitrary sunset date threatens to burden a significant number of BAS incumbents with the costs of relocation while providing little incentive for the new entrants to effectuate an expeditious relocation.[25] The fixed sunset places the risk of delay in relocation solely on BAS incumbents, while the relocation plan as a whole gives MSS licensees exclusive control over the pace of relocation. "That burden should be reversed [through elimination of the sunset], and [the risk of delay] placed on the parties – the MSS licensees – who will control the pace of relocation."[26]

A September 2010 sunset date would be even more arbitrary if applied to relocation by advanced wireless entrants because their participation in the relocation process was not even contemplated when the Commission initially established the sunset date. If the Commission decides that it must establish a sunset, at a minimum it should set the date at ten years after negotiations begin with advanced wireless providers.[27] This later sunset date should apply to MSS entrants' obligations as well because (1) a single sunset date will provide broadcasters with needed certainty (and will facilitate equitable cost-sharing between the new entrants) and (2) the changed circumstances created by a reallocation of a portion of the MSS

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[25] *NAB/MSTV 2 GHz Relocation Petition for Reconsideration* at 7-9.

[26] *Id.* at 8.

[27] To the extent that the Commission preserves a two-phased relocation, any sunset should be tied to the start of negotiations for Phase II relocation, for the reasons set forth in the *NAB/MSTV 2 GHz Relocation Petition for Reconsideration* at 8-9.

spectrum to advanced wireless providers would sufficiently alter the MSS relocation process that it should "reset" the clock on their obligations.

C. A Revised Relocation Plan Must Ensure Prompt and Full Compensation of BAS Incumbents Prior to Relocation.

The Commission determined in 1997 that the *Emerging Technologies* principles would govern the relocation of BAS incumbents in the 1990-2025 MHz band[28] and has reaffirmed that decision several times.[29] According to these principles, "[t]he cost of all steps necessary for clearing the 1990-2025 MHz band for MSS operations will be borne by MSS operators."[30] Should part of that band be reallocated to advanced wireless services, *Emerging Technologies* principles should continue to apply to ensure that new entrants, which will benefit tremendously from the availability of clear spectrum, bear their fair share of the full costs of relocating incumbents.[31] In accordance with the proposed one-stage relocation described above, BAS incumbents' relocation expenses must be paid up-front, prior to any actual retrofitting, retuning, or replacement of equipment and prior to any cessation in the use of spectrum. It is likely that 3G wireless operators will be the first entrants to occupy any part of the 1990-2025 MHz band or that they will enter the upper part of the band simultaneously with the first MSS

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[28] *See 2 GHz MSS Allocation Order*, 12 FCC Rcd at 7388 (citing *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (Emerging Technologies)*, ET Docket 92-9; First Report and Order and Second Notice of Proposed Rule Making, 7 FCC Rcd 6886 (1992); Second Report and Order, 8 FCC Rcd 6495 (1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993); Memorandum Opinion and Order, 9 FCC Rcd 1943 (1994); Second Memorandum Opinion and Order, 9 FCC Rcd. 7797 (1994)).

[29] *See 2 GHz MO&O/3d NPRM/Order*, 13 FCC Rcd at 23955; *2 GHz Relocation 2d R&O/2d MO&O*, 15 FCC Rcd at 12329.

[30] *2 GHz MSS Allocation Order*, 12 FCC Rcd at 7402.

[31] It would not be fair to require incumbent users, who already have made their own investments to harness the value of spectrum and who will derive no economic benefit from the new service, to bear the relocation costs. *NAB/MSTV 2 GHz Petition for Reconsideration* at ii.

entrants entering lower parts. The first entrants into the 1990-2025 MHz band, be they advanced wireless operators or MSS operators, should initially bear the cost of relocating all BAS licensees to 2025-2110 MHz[32] because they value access to the spectrum most highly and will have use of it for the longest period of time.

BAS Incumbents And New Entrants Should Negotiate Collectively: Under the existing relocation plan, BAS incumbents within a Nielsen DMA must coordinate their decision whether to surrender BAS channel 1 during Phase I or to be relocated to seven smaller channels.[33] Because of the way in which BAS licensees share the spectrum, as discussed above, coordinated relocation is necessary. The Commission already has recognized that "[t]he integrated nature of BAS . . . makes isolated, link-by-link relocation infeasible."[34] If coordinated relocation is to occur efficiently and on an expedited schedule, the new entrants must also negotiate in a coordinated fashion.

III. ANY TERRESTRIAL USE OF MSS SPECTRUM MUST BE TRULY ANCILLARY TO THE PRIMARY SATELLITE SERVICE AND MUST NOT INTERFERE WITH INCUMBENT SERVICES IN ADJACENT SPECTRUM.

In the *MSS Flexible Spectrum Use NPRM*, the Commission proposes to allow MSS operators to integrate terrestrial operations with their networks using assigned MSS

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[32] It would be contrary to the *Emerging Technologies* principles and entirely without precedent to require BAS licenses to relocate in one step to accommodate wireless entrants, yet be forced to endure what could be a years-long wait to be compensated as other entrants gradually begin service. *See* 47 C.F.R. § 101.75(a) (FT entrant must guarantee payment of relocation costs for system of involuntarily relocated FMS incumbent and replacement system must be complete before new entry); *2 GHz Relocation 2d R&O/2d MO&O*, 15 FCC Rcd at 12336-12337 (establishing cost-sharing plan for later MSS entrants to repay earlier entrants for costs of clearing spectrum based on principles of *Microwave Cost-Sharing* proceeding).

[33] *2 GHz Relocation 2d R&O/2d MO&O*, 15 FCC Rcd at 12330-31.

[34] *Id.* at 12325.

spectrum.[35] Specifically, the Commission seeks comment on two proposals. One would permit existing MSS licensees to use their assigned MSS frequencies to provide terrestrial services that are truly "ancillary" to their authorized satellite services. Under this proposal, terrestrial services would be authorized only for requesting MSS operators whose satellite operations otherwise satisfy full coverage requirements but need to be "augment[ed] . . . in areas where the principal service signal, the satellite signal, is attenuated."[36] The alternative proposal would make some MSS spectrum available for use by (and possible assignment by auction to) any entity to provide terrestrial services either in conjunction with an MSS system or as an alternative mobile service.[37]

As a matter of principle, the Joint Broadcasters are not opposed to the Commission's general policy goal of affording licensees technical, operational, and service flexibility.[38] However, the Commission should assure that any decision designed to promote that goal by permitting ancillary terrestrial use of MSS spectrum (1) that serves only to provide fill-in service to the MSS satellite service and (2) that does not interfere with incumbent operations in adjacent spectrum.

The Joint Broadcasters agree that "'ancillary' terrestrial services [should] refer strictly to services provided by MSS operators that are integrated with the satellite network, use assigned MSS frequencies, and are provided for the purpose of augmenting signals in areas

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[35] *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band*, Notice of Proposed Rulemaking, IB Docket No. 01-185, FCC 01-225 (rel. Aug. 17, 2001) ("*MSS Flexible Spectrum Use NPRM*").

[36] *Id.* at ¶¶ 29-30, 32.

[37] *See id.* at ¶ 37.

[38] *See id.* at ¶ 25.

where the principal service signal, the satellite signal, is attenuated."[39] BAS incumbents are being asked to vacate over 25% of their previously allocated spectrum – and MSS licensees have been granted their authorizations – based on the Commission's (and the World Radio Conference's) determination that the spectrum is needed for a global satellite service.[40] It would be grossly unfair and a misuse of spectrum to permit MSS operators (who have not paid for their spectrum like other providers of terrestrial mobile services) to now use their assigned spectrum for terrestrial services that are not entirely related to the primary satellite service. Accordingly, the Commission should adopt its proposed requirement that no MSS operator be permitted to offer terrestrial service until it can provide satellite service covering 100 percent of the United States 100 percent of the time.[41] Similarly, to the extent that the Commission maintains a two-phased relocation of BAS incumbents out of MSS spectrum, the Commission should clarify that an MSS operator's request for access to Phase II spectrum must be predicated on a need for additional spectrum to provide satellite, not terrestrial, services.

The Commission's proposal to allow terrestrial use of MSS spectrum by "any entity" providing mobile services in conjunction with, or independent of, an MSS operator would entail the reallocation of spectrum to new services and entrants. Any such proposal should be considered under the *Wireless Reallocation MO&O/FNPRM* in accordance with the principles discussed above.

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[39] *Id.* at ¶ 30.

[40] *See 2 GHz MSS Allocation Order*, 12 FCC Rcd at 7394-95.

[41] *See MSS Flexible Spectrum Use NPRM* at ¶¶ 32, 42.

CONCLUSION

The Commission may well choose to reallocate some MSS spectrum for advanced wireless uses. But such reallocation necessitates rationalizing and simplifying the current two-phase, market-staggered BAS relocation plan. The Commission should immediately stay all relocation negotiations pending a decision regarding reallocation, and if the Commission reallocates spectrum, the stay should continue through the licensing of new entrants. The new relocation plan should relocate all BAS incumbents in all markets together and ensure prompt and full compensation of BAS incumbents prior to relocation. Finally, the Commission should shift the risk of a delay in use of the MSS or wireless spectrum from BAS incumbents alone by eliminating or extending the sunset date for compensation of displaced incumbents.

Respectfully submitted,

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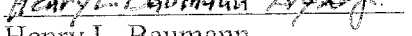

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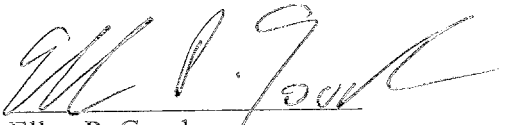

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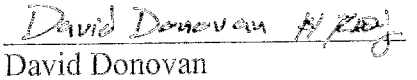

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